Filed 8/28/19 Anita N. v. Super. Ct. CA2/8

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

ANITA N., Petitioner, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Real Party in Interest.	B297385 (Los Angeles County Super. Ct. No. 18CCJP01159)

ORIGINAL PROCEEDINGS in mandate. Pete Navarro, Judge. Petition granted.

Law Office of Martin Lee; Los Angeles Dependency Lawyers, Inc., Martin Lee, Bernadette Reyes and Jonathan Hannigan for Petitioner.

No appearance for Respondent.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Kimberly Roura, Deputy County Counsel, for Real Party in Interest.

Helen Yee for minors.

INTRODUCTION

At a March 20, 2019 disposition hearing for minors C.M. and A.M., the juvenile court ordered removal of the minors from their parents, denied reunification services to both parents, and scheduled a selection and implementation hearing. (Welf. & Inst. Code, § 366.26.) Mother petitions for extraordinary relief, arguing that the juvenile court wrongly proceeded with disposition absent a proper investigation and notice by the Department of Children and Family Services (the Department) regarding her possible Indian ancestry pursuant to the Indian Child Welfare Act (ICWA). (Cal. Rules of Court, rule 8.452.)

FACTUAL AND PROCEDURAL BACKGROUND

We issued an order to show cause setting a briefing schedule and oral argument. The Department, the minors, and mother then filed a joint stipulation. The parties requested: (1) a limited reversal of the juvenile court's order setting a selection and implementation hearing, and (2) directions to the juvenile court to order the Department to effectuate proper notice pursuant to the ICWA.

The parties stipulate that mother informed a Department social worker on February 20, 2018 that "she had Indian heritage 'with the California Indian Apache . . . .' " They further stipulate that, on February 22, 2018, mother filed a Parental Notification of Indian Status form indicating that she may have Apache ancestry. That day, the juvenile court ordered the Department " 'to notice the Apache Nation and all pertinent federal agencies

to ascertain whether or not this is an ICWA matter.' " The parties agree that the record contains no notices to the Apache tribes.

The parties state: "Thus, it appears a limited reversal of the order setting a section 366.26 hearing to ensure proper notice under the ICWA is appropriate." The parties explained that the purpose of the stipulation was to place them "in the same position they would be in if the petition for extraordinary writ were prosecuted to successful completion and resulted in reversal of the juvenile court's order setting a section 366.26 hearing."

DISCUSSION

Congress enacted the ICWA in response to "rising concern in the mid-1970's over the consequences to Indian children, Indian families, and Indian tribes of abusive child welfare practices that resulted in the separation of large numbers of Indian children from their families and tribes through adoption or foster care placement, usually in non-Indian homes." (*In re Isaiah W.* (2016) 1 Cal.5th 1, 7, quoting *Mississippi Band of Choctaw Indians v. Holyfield* (1989) 490 U.S. 30, 32.) Pursuant to the ICWA, "it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture . . . ." (*In re Isaiah W.*, at pp. 7-8, quoting 25 U.S.C. § 1902.)

The ICWA requires the Department to provide tribes with notice of the dependency proceedings. This requirement both "facilitate[s] a determination of whether the child is an Indian

child" and "ensures that an Indian tribe is aware of its right to intervene in or, where appropriate, exercise jurisdiction over a child custody proceeding involving an Indian child." (*In re Isaiah W.*, *supra*, 1 Cal.5th at pp. 8–9.)

Pursuant to Code of Civil Procedure section 128, subdivision (a)(8)(A) and (B), an appellate court may reverse a judgment upon stipulation of the parties if the court finds that: (1) "[t]here is no reasonable possibility that the interests of nonparties or the public will be adversely affected by the reversal"; and (2) "[t]he reasons of the parties for requesting reversal outweigh the erosion of public trust that may result from the nullification of a judgment and the risk that the availability of stipulated reversal will reduce the incentive for pretrial settlement."

We find that both conditions are met here. The parties agree that mother advised the Department and the juvenile court that she may have Apache ancestry and that the record does not reveal any ICWA notices. The parties' stipulation requests only a limited reversal. The parties do not request a new or different determination of, for example, whether the minors should be detained and removed from their parents' custody or whether the parents should receive reunification services. The stipulation is limited in scope to ensure that the Department properly sends ICWA notices.

Under the circumstances, there is no reasonable possibility that ordering a limited reversal to allow for proper notice under the ICWA would adversely affect the interests of nonparties or the public. To the contrary, efficient resolution of this matter pursuant to the parties' stipulation will protect the rights of relevant non-party tribes. Similarly, the parties' reasons for

requesting limited reversal outweigh any potential erosion of public trust.

DISPOSITION

The juvenile court's order of March 20, 2019 is vacated insofar as it set a selection and implementation hearing pursuant to Welfare & Institutions Code section 366.26. The matter is remanded to the juvenile court with directions that it order the Department to effectuate notice in accordance with the ICWA. The juvenile court shall determine whether the notices are sufficient. If no tribe indicates that C.M. or A.M. is an Indian child, the juvenile court shall reinstate its March 20, 2019 order. If a tribe indicates that C.M. and/or A.M. is an Indian child, then the juvenile court shall proceed in compliance with the ICWA.

This opinion is final forthwith as to this court pursuant to rule 8.490(b)(2)(A) of the California Rules of Court.

STRATTON, J.

We concur:

BIGELOW, P. J.

GRIMES, J.